



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Mr. James R. Schnurr
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR98-2964

Dear Mr. Schnurr:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120161.

The City of Dallas (the "city") received a request for all records involving David Hernandez. You indicate that a portion of the responsive documents are excepted from public disclosure by section 552.101 of the Government Code in conjunction with rights of privacy. You have submitted the information you seek to withhold.¹ We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* Financial information concerning an individual is in some cases protected by a common-law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3

¹You indicate that the requestor asked for information from "his" file. However, the requestor is not the same person as the individual whose file is sought. No special rights of access are urged or are apparent.

(1983). Such information regarding public employees presents special considerations. Information regarding a financial transaction between a person and a governmental body is a matter of legitimate public interest; thus, the second prong of the *Industrial Foundation* test is not met and the doctrine of common-law privacy does not protect this information from disclosure. Open Records Decision No. 385 at 2 (1983). Examples of financial transactions considered to be between the person and the governmental body include: a donation to a public institution, Open Records Decision No. 590 (1991); a debt owed to a public hospital, Open Records Decision No. 385 (1983); and a public employee's participation in an insurance program funded wholly or partially by his employer, Open Records Decision No. 600 (1992). However, a public employee's participation in a voluntary investment program or deferred compensation plan that is not funded by the governmental body is not considered a financial transaction between the individual and the governmental body; as this type of information meets both prongs *Industrial Foundation* test it is considered confidential and is excepted from public disclosure. Open Records Decision No. 545 (1990).

All of the submitted information pertains to a government employee's participation in an insurance program. We note that the submitted information indicates that the program is funded wholly or partially by the city. The information is therefore "a matter of legitimate public interest" and it is not excepted from disclosure by a right of privacy. We note however that the submitted documents includes information that may be excepted under section 552.117 of the Government Code. That section excepts from disclosure information revealing, among other things, whether or not a peace officer has family members. This section also applies to public servants who have opted to restrict access to this information. We have marked the submitted documents to indicate which information may not be released, pursuant to section 552.117, in the event that the subject of this request falls within one of the classes of public employees therein described. In the event that the subject of these records is not within the ambit of section 552.117, the submitted information must be disclosed in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 120161

Enclosures: Submitted documents

cc: Ms. Madalyn Hernandez
2014 Main Street, Room #100B
Dallas, Texas 75201
(w/o enclosures)